

# Contracts & Commissioning Board (CCB)

## Contract Variation Report

Date of meeting	27 <sup>th</sup> May 2021
By	Clive Kershaw, (Programme Manager – Education, Capital Delivery for Homes and Schools)
Title	Educational Temporary Modular Building Hire and Purchase Contract Variation at Redgates School and Coulsdon College
Project Sponsor	Shelley Davies (Director of Education)
Lead Member	Councillor Flemming (Cabinet Member for Children, Young People and Learning)
Key Decision	N/A

### 1. Recommendations

The Leader of the Council has delegated to the Cabinet Member for Children, Young People and Learning in consultation with the Cabinet Member for Resources and Financial Governance the power to make the decisions set out in the recommendations below:

- 1.1 The Cabinet Member for Children, Young People and Learning in consultation with the Cabinet Member for Resources and Financial Governance is recommended by the Contracts and Commissioning Board (CCB) to approve the variation of the Modular Building Contract with Elliot Group Ltd at the Coulsdon College Site, in accordance with Regulation 30.3 of the Council's Tenders and Contracts Regulations for an additional contract term of 52 weeks plus an option for an additional 52 weeks at an additional cost of £108,160.00 to a new maximum total contract value of £795,343.70. This results in a variance to the original award, aggregated with previous variations, of 62% in value and 100% in time.
- 1.2 The Cabinet Member for Children, Young People and Learning is requested to note that the Chair of CCB has approved a variation of the Modular Building Contract with Elliot Group Ltd for the 2 classroom Modular Building at Redgates Primary School, and a variation of the Modular Building Contract with Elliot Group Ltd for the 1 classroom Modular Building at Redgates Primary School, in accordance with Regulation 30.3 of the Council's Tenders and Contracts Regulations.

### 2. Executive Summary

This Contract Variation Report sets out a request to vary current hire periods of three modular buildings and the subsequent purchase of two modular buildings at Redgates School that are currently located in the borough, that are required to continue to provide dedicated SEN Statutory educational provision for pupils.

The funding source to cover this award will be from CIL. A detailed breakdown of funding requirements over the duration of the contract period is provided within the finance section of this report.

### 3. Background & strategic context

Over recent years there has been a continued spike in the demand for Special Education Needs Places in the borough. The number of places that the Authority has a statutory duty to provide has been in excess of the number of places that are actually available across the existing estate in the borough.

Over the past three years urgent demand for places has outstripped supply, therefore a number of modular buildings have been installed and hired on our existing estate on a temporary basis to meet this spike. The modular buildings which we currently have across our estate, when the hire period started and ends and the associated original CCB award reference is as follows:

School Site	Modular Specification	CCB References	Hire Period Starts	Hire Period Ends
Redgates Primary School	1 classroom	Original Award: Director Approvals Variation: CCB1547/19-20	September 2018	August 2021
Redgates Primary School	2 classroom	CCB1490/19-20	December 2019	August 2021
Coulsdon College	Standalone Facility	Original award: CCB1475/18-19 Variation: CCB1523/19-20	September 2019	August 2021

### Redgates Primary School

The two modular buildings within the site boundary were originally proposed to be in use for a short period of time so that a full and thorough review could be undertaken by the Council of the entire Special Education Needs Estate to determine the long term permanent provision and potential redevelopment prospects of the sites to meet our statutory demands.

Currently this wider review and potential renewal programme is on hold, therefore there is a requirement to extend the existing hire periods of the modular buildings for a period of time until the long term permanent provision can be agreed and put in to place.

The original award value for the 1 classroom modular was £159,109.62, which was varied following an increase in the original hire period of the units as requested by Education Colleagues. The value was therefore increased to £215,552.29 and approved by CCB, making the aggregated value increase 51%.

### Coulsdon College

The modular building on the Coulsdon College site is a purpose built facility to provide a dedicated educational pathway facility for 19-25year olds. The facility was installed on a temporary basis until a permanent provision can be provided in the borough. This brand new facility will provide dedicated statutory SEN provision for pupils aged 16-25 years and is due to open in September 2022.

The original award value was £495,522.00, which was varied following additional construction costs, allowance of contingency and project changes requested by the Education Department. The value was therefore increased to £687,184.00 and approved by CCB, making the aggregated value increase 62%.

### **Proposal:**

The proposal is to extend the current hire contracts for an agreed period of time and then either remove the modular buildings from site or purchase. The exact details are set out below:

### Hire Period Extension Period

The proposal is to extend the hire periods of the modular buildings as follows:

School Site	Modular Specification	Current Hire Period Ending	Proposed New Hire Period End Date	Extension Period
Redgates Primary School	1 classroom	August 2021	August 2024	3 years
Redgates Primary School	2 classroom	August 2021	August 2024	3 years
Coulsdon College	Standalone Facility	August 2021	August 2023	1 year + 1 additional year if required*

\*Currently education colleagues are securing the long term provider of the 16-25 SEN Service Provision in the borough. To mitigate if there is any delay to this award and the opening of the permanent facility in September 2022 this variation report allows for a 1 year + 1 year optional extension hire period for the facility at Coulsdon College. This option will ensure continuity of a statutory service provision but also provide a greater cost benefit of a 2 year hire period now and a cost avoidance of £1,690.00. If the facility is required for less time we would initiate the release clause and pay any uplift in weekly rental penalties based on the actual hire period.

#### Modular Purchase

Following the conclusion of the Hire Period the Coulsdon College modular building will be removed from site, whilst the two modular buildings at Redgates School will be purchased as there will be a continued requirement for them to provide educational provision until a long term permanent solution is agreed.

To note, Elliott Group Ltd would not permit the Council to purchase the hired modular buildings at the end of their current lease period, but have agreed to do so after a further three years of hire.

#### **4. Financial implications**

The table below sets out in detail the original contract award value and new proposed value.

#### Detailed Cost Variation

Project	CCB Contract Award Value (aggregated with previous variations)	Proposed New CCB Contract Award Value	Cost Variance	Variance %
Coulsdon College	£687,183.70	£795,343.70	£108,160.00	16% (aggregated increase of 62%)
Redgates School 1 classroom Modular	£215,552.29	£311,366.82	£95,814.53	44% (aggregated increase of 51%)
Redgates School 2 classroom Modular	£258,453.00	£405,934.26	£147,481.26	57%

Coulsdon College Cost Variance Sum – 104 week additional hire @ £1,040 per week

Redgates School 1 classroom Modular Cost Variance Sum – 156 weeks additional hire @ £390.00 per week and purchase price of £34,974.53

Redgates School 2 classroom Modular Cost Variance Sum – 156 weeks additional hire @ £480.00 per week and a purchase price of £72,601.26

The financial spend over the coming years and funding source is as follows:

	<b>2021/22</b> <b>£'000</b>	<b>2022/23</b> <b>£'000</b>	<b>2023/24</b> <b>£'000</b>	<b>2024/25</b> <b>£'000</b>
<b>Effect of decision from this report</b>	70	94	66	121
<b>Funding sources</b>				
<b>CIL</b>	70	94	66	121
<b>January 2021 Education Estate Strategy Paper CIL Funding Allocation</b>	300	200	200	0
<b>Remaining</b>	230	106	134	-121*

\*The Cabinet Paper approved in January 2021 sets out spend for the next three financial years. The CIL funding requirement to cover this contract award spend in 2024/25 will be included in the Education Estate Strategy Paper presented to Cabinet in January 2022.

#### **Essential Spend Criteria:**

Following the Council's issuing Local Government Act Section 114 (now lifted), the continued hire of these facilities falls under the following essential spend criteria:

- expenditure required to deliver the council's provision of statutory services at a minimum possible level;
- urgent expenditure required to safeguard vulnerable citizens;
- expenditure necessary to achieve value for money and / or mitigate additional in year costs.

This is because:

The Council has a statutory duty as an educational provider to provide suitable school places for pupils in the borough in accordance with the DfE and DoH Special educational needs and disability code of practice: 0 to 25 years and statutory duty under part 3 of the Children and Families Act 2014

## **5. Supporting information**

#### **Procurement process:**

Elliot Group Ltd were originally awarded these contracts through existing frameworks, the NHS Framework Lot 8 NHS Modular Buildings Shared Business Services and the Council's own Modular Framework.

#### **Contract terms and conditions:**

The following agreements will be put in place to capture these proposed variations to the original contract award:

Coulsdon College and 1 Classroom Modular at Redgates School – Council Frame Work

This framework has now expired, therefore a new legal agreement will need to be drawn up between both parties.

## 2 classroom Modular at Redgates School - NHS Framework Lot 8 NHS Modular Buildings Shared Business Services

This framework expires on the 17<sup>th</sup> July 2021 and can be utilised to vary the hire period and then purchase the units through existing SLAs within the framework.

### **Cost Analysis / Value for Money:**

The Authority has undertaken continued negotiations with the contractor to obtain best value and have achieved the following cost avoidance.

#### Purchase of Units after 3 years as opposed to 5 years

Project	3 Year Hire	3 Year Purchase	5 Year Hire	5 Year Purchase	Cost Avoidance
Redgates School 1 classroom Modular	£60,840.00	£34,974.53	£97,500.00	£23,316.36	£25,001.83
Redgates School 2 classroom Modular	£74,880.00	£72,601.26	£120,900.00	£49,887.37	£23,306.11

#### Reduced Hire Charge Rate:

Project	Original Hire Rate	New Hire Rate	Variance %	Cost Avoidance over hire period
Coulsdon College	1,072.50	£1,040.00	-3%	£3,380.00
Redgates School 1 classroom Modular	£418.50	£390.00	-7%	£4,446.00
Redgates School 2 classroom Modular	£515.32	£480.00	-7%	£5,509.92

**This is a total cost avoidance to the Authority of £61,643.86 which equals 17% of the overall contract variation amount.**

To note, the contractor is under no obligation to allow the Authority to purchase the modular buildings after a reduced hire period of 3 years or purchase the units outright immediately. They are entitled to charge the Authority for the full 5 year period and then the full cost to remove their assets. Therefore the reduced hire period, option to purchase and a reduction in weekly hire costs offer the Authority a considerable cost avoidance.

It is also to be noted, that by purchasing the buildings on the Redgates School Site, it allows the Authority greater flexibility to determine the future of these units, be it to be continued to be used for education purposes while not paying continued hire fees, demolished at a greatly reduced rate rather than removed from site by the contractor or relocated to another site should the Authority choose to do so.

## Notional Costs of Future Option

Option	Demolition Costs	Relocation Costs	Modular Company Removal
1 classroom Modular	£18,000.00	£120,000.00	£34,000.00
2 classroom Modular	£35,000.00	£160,000.00	£72,000.00

### Options Analysis

The Council has considered and rejected the following options and reasons for this:

**Option 1 - Re-procurement of Services:** The Authority could go to the market to obtain a new quotation for design, supply, construction and subsequent hire of new modular buildings. However this has been rejected due to significant cost increase to remove the existing modular buildings and install like for like new buildings. The timeframe to undertake this is also restricted due to the existing modular buildings being habited, you would only be able to remove and install during the summer holiday period when they are vacant.

**Option 2 - Do Nothing:** The Authority could remove the modular buildings from the site and displace the pupils to other SEN providers outside of the Borough as there is no additional capacity or required expertise elsewhere in the Estate. This would have a fundamental impact on the pupils who currently attend these schools and are taught in these buildings, there would be significant challenge from parents and carers of the pupils displaced, and it would cost the Council a significant sum of money as the cost to educate a pupil outside of the borough is considerably more than within.

### Equalities Impact Assessment:

An Equality Analysis has been undertaken for these projects when originally awarded and the findings highlighted that the contract would have no impact. Elliott Group Ltd will be required to deliver its obligations in accordance with the Equality Act 2010.

### Contract Management:

The proposed hire contract will be managed by Capital Delivery for homes and schools team.

### Environmental Impact

In terms of transport, residents of the borough attending school within the borough will support efficient transportation and reduce of carbon emissions.

### Risk Management and risk of challenge:

Internal and External stakeholders (the schools) are being kept up to date with developments regarding this award and its subsequent impact on service delivery.

The modifications within this report do not fall within a permitted modification under Regulation 72 of the PCR and so there is a potential risk of a procurement challenge, however this risk is considered to be low. Furthermore, in relation to the Coulsdon College contract, the original framework agreement for this procurement has now expired. This means the contract, technically, cannot be extended and so a 'new' contract is being entered into. However, the contract arrangements are effectively being extended and, as such, the total value should be treated as aggregated. Overall, the risk of challenge is still considered to be low.

### Information Management

No data processing or GDPR considerations need to be applied to this contract.

## 6. Conclusion and reasons for recommendations

Having conducted a comprehensive review of the costs provided by Elliott Group Ltd, and reviewed and rejected all other options, it is deemed that this variation to existing agreements has demonstrated the ability to fulfil the Council's requirements and offer good value for money. CCB are therefore asked to approve the recommendations in this report.

## 7. Outcome and approvals

Outcome	Date agreed	
	Sarah Hayward (Interim Executive Director of Place)	13 <sup>th</sup> May 2021
	Shelley Davies (Interim Director of Education and Youth Engagement)	30 <sup>th</sup> March 2021
	Ozay Ali (Interim Director of Homes & Social Investment)	30 <sup>th</sup> March 2021
	Councillor Flemming (Lead Member) Sighted	30 <sup>th</sup> March 2021
	Councillor Flemming (Lead Member) Briefed	30 <sup>th</sup> June 2021
	Councillor Callton Young (Cabinet Member for Resources & Financial Governance)	24 <sup>th</sup> June 2021
	Kiri Bailey (Legal Services)	26 <sup>th</sup> April 2021
	Geetha Blood (Interim Head of Finance)	29 <sup>th</sup> April 2021
	Yvonne Okiyo (Equalities Lead)	09 <sup>th</sup> April 2021
	Scott Funnell (C&P Head of Service)	25 <sup>th</sup> March 2021
	CCB	CCB1676/21-22 (02/07/2021)

## 8. Legal Comments

The legal considerations are as set out within this report.

Approved by Kiri Bailey, on behalf of the Interim Director of Law and Governance.

## 9. Chief Finance Officer comments on the financial implications

Approved by Geetha Blood on behalf of the Director of Finance.